In the High Court of Uttaranchal at Nainital

Criminal Misc. Application No. 5 of 2006

Ashok Kumar Malhotra S/o Late Dev Raj Malhotra
R/o Quarter No. 15, Type 3 Sector, 5-B, B.H.E.L
P.S. Ranipur District Haridwar. .....Applicant

Vs

1. State of Uttaranchal,
2. Jagdish Prasad Chauthan S/o Chandrapal
   R/o C-103, Sri ram Nagar, Jawalapur,
   P.S. Jwalapur
   District Haridwar .....Respondents.

Sri M.K. Goel, Advocate for the applicant.
Ari A.Rab, learned Addl. G.A. for the State.

Hon'ble B.C. Kandpal, J.

This petition U/S 482 Cr.P.C. has been filed by applicant Ashok Kumar Malhotra, who has been summoned by the Judicial Magistrate, Haridwar to face the trial U/S 138 of Negotiable Instruments Act, vide order dated 25-10-2005.

2- Brief facts of the case are that respondent No.2 made a payment of Rs. 3,70,000/- to the petitioner, who in turn issued the post-dated cheque with the assurance that it will be honored on the presentation before the Bank on 5-9-2005, it was dishonored. Thereafter respondent No.2 issued a notice to the petitioner, but the petitioner did not pay any amount to the respondent No.2, therefore, he filed a complaint U/S 138 Negotiable Instruments Act in the court of Judicial Magistrate, Haridwar.

3. The Judicial Magistrate, Haridwar after having perused the complaint and the material contained along with the complaint, issued the summon to the petitioner for facing the trial U/S 138 Negotiable Instruments Act vide order dated 25-10-2005.

4- The petitioner U/S 482 Cr. P.C. has challenged the summoning order as well as the entire criminal proceedings of the case No. 998/2005 Jagdish Prasad Chauhan Vs. Ashok Kumar Malhotra, U/S 138 Negotiable Instruments Act, pending before the Judicial Magistrate, Haridwar.

5- Heard learned counsel for the petitioners, leaned A.G.A. and perused the record.

6- Having heard the arguments advanced by the leaned counsel for the parties, I am of view that there is no abuse of process of court. The disputed questions of facts are involved in the case, which can be assessed by the trial Judge, I am not supposed to act as a trial Judge in order to render the judgment without having any material or evidence before me.

7- The leaned counsel for the petitioner has submitted before me that the notice served by the respondent No.2 to the petitioner is illegal as no demand for the money, has been mentioned therein.

8- The argument advanced by the learned for the petitioner appears to be devoid of any force.

9- Perusal of the notice, which is contained in Annexure-2 to this writ petition, shows that the respondent No.2 claimed an amount of Rs. 3,70,000/-

by way of the notice and the averments made in the notice are very clear that the intention of the respondent No.2 is to demand the amount involved in the case, i.e. Rs. 3,70,000/-. I do not find any material available on record which may suggest that notice sent by the respondent No.2 to the petitioner can be held to be illegal.

10- The petition being devoid of any merit, is liable to be dismissed.

11- Accordingly the petition is dismissed. The stay order dated 4-1-2006 stands discharged.

(B.C. Kandpal, J.)

Dated: 19.07.2006
ISB